

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT W. TATE,

Defendant-Appellant.

UNPUBLISHED

March 18, 2003

No. 237795

Wayne Circuit Court

LC No. 00-012832

Before: Markey, P.J., and White and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. The trial court sentenced defendant to concurrent terms of life in prison for the second-degree murder conviction and forty to sixty months’ imprisonment for the felon in possession of a firearm conviction. The trial court set these sentences to be served consecutively to a two-year sentence for the felony-firearm conviction. Defendant appeals as of right. We affirm.

I. Sufficiency of the Evidence

Defendant argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that defendant was not acting in self-defense when he shot the victim. Defendant did not need to take any special steps to preserve this issue for appeal. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In reviewing a claim of insufficient evidence, this Court must determine whether, taking the evidence in the light most favorable to the prosecution, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). A claim of self-defense requires proof that the defendant acted in response to an assault. *People v Elkhoja*, 251 Mich App 417, 442; 651 NW2d 408 (2002), lv gtd 467 Mich 915 (2002). “[T]he killing of another person in self-defense is justifiable homicide only if the defendant honestly and reasonably believes his life is in imminent danger or that there is a threat of serious bodily harm and that it is necessary to exercise deadly force to prevent such harm to himself.” *People v Riddle*, 467 Mich 116, 127; 649 NW2d 30 (2002). A defendant is never obligated to retreat from a sudden, violent attack or to retreat when to do so would be unsafe. *Id.* at 127-130, 142. A person is not required to retreat from an attacker who he reasonably believes is about to use a deadly weapon. *Id.* at

119, 128-131. Once the defendant introduces evidence of self-defense, the prosecutor has the burden of disproving it beyond a reasonable doubt. *Elkhoa*, *supra* at 443.

The incident at issue took place when defendant went to a drug-dealer's house to buy crack cocaine. When defendant arrived, the victim let him in and the phone rang. While the victim was on the phone, defendant was waiting in the kitchen when he decided to steal some money from the kitchen counter drawer. As defendant was rifling through the drawer, the victim walked in the kitchen, saw what was defendant was doing, and swore at defendant. According to defendant's statement to police, the victim then reached toward his back. Defendant allegedly thought the victim was reaching for a gun, so he pulled out his own gun and fired three or four shots at the victim and killed him. Defendant then took about \$150 from the kitchen drawer, went home, and buried his gun in his backyard.

We conclude that the evidence was sufficient to negate defendant's claim of self-defense beyond a reasonable doubt. Defendant had been smoking crack cocaine before the incident and admitted that he never saw the victim with a gun the day of the shooting and, although he knew the drug-dealer who owned the house to carry a gun, he did not know the victim to carry a gun. No weapons were found on or near the victim's body. There is no evidence that the victim threatened defendant's life in any way. The only evidence supporting defendant's self-defense theory is his statement that the victim was reaching behind his back. In these circumstances, the evidence was sufficient to prove that defendant's alleged belief that he was in danger of injury was not reasonable.

II. Trial Court's Findings of Fact and Conclusions of Law

Defendant next argues that the trial court made insufficient findings of fact and conclusions of law by neglecting to address his claim that he acted in self-defense. MCR 6.403 is the court rule regarding findings in bench trials:

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

A trial court's findings are sufficient if they establish that the trial court was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The court does not need to make specific findings of fact regarding each element of the crime. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2). "A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review." *Legg*, *supra* at 134-135.

In the present case, it is clear that the trial court was aware of defendant's claim of self-defense and rejected the claim. In regard to defendant's second-degree murder conviction, the trial court apparently believed defendant's statement that he killed the victim and concluded that

defendant intended to kill the victim. In regard to defendant's self-defense claim, the trial court appeared to find that defendant's statement that the victim was reaching for something was not enough to support a self-defense claim. A trial court is not required to state on the record the test it used in determining whether a defendant acted in self-defense. *People v Garfield*, 166 Mich App 66, 80; 420 NW2d 124 (1988). However, the trial court's factual findings must be specific enough to disclose the basis for each critical determination. *People v Jackson*, 63 Mich App 249, 254; 234 NW2d 471 (1975).

The trial court did not make any finding regarding whether it believed defendant's statement that the victim was reaching behind his back. Additionally, the trial court did not make any findings regarding whether defendant honestly and reasonably believed his life was in imminent danger or whether there was a threat of serious bodily harm and it was necessary for defendant to exercise deadly force to prevent such harm to himself. Nonetheless, remand is not required because it is clear that the court was aware of the self-defense issue, it resolved the issue, and further explication would not facilitate appellate review. *Legg, supra* at 134-135. Even if the trial court believed defendant's statement in its entirety, there is no evidence to support the conclusion that defendant reasonably believed the victim was going to shoot him. Defendant did not see the victim with a weapon on the day of the shooting and had never seen him with a weapon in the past. No weapons were found on or near the victim's body. There is no evidence to support defendant's assumption that the victim was reaching for a weapon to shoot him. If remanded, it is clear that the trial court would explain that either: (1) defendant did not honestly believe that the victim was reaching for a gun to shoot him, or (2) even if defendant honestly believed that defendant thought that the victim was reaching for a gun to shoot him, this belief was not reasonable. Remanding this case for further fact finding would not facilitate appellate review and would be an inefficient use of judicial resources. Therefore, we decline to do so.

III. Proportionality of Defendant's Sentence

Finally, defendant argues that his sentence to life imprisonment is disproportionate in light of the offense and his background. Because defendant committed the offenses of which he was convicted on August 23, 2000, the legislative sentencing guidelines were used to determine the recommended range of defendant's minimum sentence. MCL 769.34(2). Defendant does not dispute that the life sentence for his second-degree murder conviction was within the appropriate guidelines sentencing range. "Under MCL 769.34(10), this Court may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines." *People v Pratt*, 254 Mich App 425, 429-430; ___ NW2d ___ (2002). Because defendant's life sentence falls within the appropriate legislative guidelines range, this Court may not consider a challenge to the proportionality of defendant's sentence.

Affirmed.

/s/ Jane E. Markey
/s/ Helene N. White
/s/ Brian K. Zahra